

Federal Communications Commission

DA 98-2366

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )

Amendment of Section 73.202(b), )

Table of Allotments, )

FM Broadcast Stations. )

(Princeton and Elk River, Minnesota) )

MM Docket No. 98-208

RM-9396

## NOTICE OF PROPOSED RULE MAKING

Adopted: November 18, 1998

Released: November 27, 1998

Comment Date: January 19, 1999

Reply Date: February 3, 1999

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Milestone Radio, LLC ("Milestone"), proposing the reallocation of Channel 291C2 from Princeton, Minnesota, to Elk River, Minnesota. Milestone also requests modification of its license for Station KLCI, Princeton, to be modified to specify operation at Elk River. Milestone indicated that it would file an application for Channel 291C2 at Elk River if the channel is allotted to the community.

2. Milestone filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Milestone states that Channel 291C2 may be allotted to Elk River consistent with the Commission's separation requirements and would provide full principal community service over the proposed community of license. Further, the proposed reallocation will bring a first local service to Elk River, triggering allotment priority number three, while retention of the channel in Princeton triggers priority number four because Station WQPM(AM) is licensed to Princeton. Although Milestone believes the reallocation should be allowed because of the higher allotment priority, Milestone also points out that Elk River with a population of 11,143 people is considerably larger than Princeton with a population of 3,719. Milestone further states that the reallocation will not remove service from a rural area to serve an urban area and because its transmitter location and power will remain unchanged, there will be no decline in service area or number of listeners

reached. Milestone also states that the present KLCI city grade contour encompasses small portions of both the Minneapolis-St. Paul Urbanized Area and the St. Cloud Urbanized Area, and that the proposed reallocation will not increase coverage to either of these areas. Therefore, Milestone believes it should not be required to document the independence of Elk River from either of these urbanized areas.

3. We believe Milestone's proposal warrants consideration since the reallocation of Channel 291C2 from Princeton to Elk River could provide the community of Elk River with its first local aural transmission service under our allotment priorities.<sup>1</sup> In addition, the proposed reallocation and change of community of license to Elk River would not result in a loss of local service to Princeton since Station WQPM(AM) is licensed to Princeton. A staff engineering analysis has determined that Channel 291C2 can be allotted to Elk River in compliance with the Commission's minimum distance separation requirements at Milestone's specified site.<sup>2</sup> We note that Station KLCI's current transmitter site at Elk River is authorized under Section 73.215 of the Rules and in authorizing the use of contour protection methods at the application stage, the Commission specifically stated that it did not contemplate the use of directional antennas to create short-spaced allotments at the rule making stage. See Report and Order, MM docket No. 87-121, 4 FCC Rcd 1681 (1989). Milestone has, however, specified an alternate site which meets the Commission's spacing requirements for the allotment of Channel 291C2 at Elk River and is the site which we are proposing for the requested change of community. See Chester and Wedgefiled, SC, 4 FCC Rcd 4503 (1990) and 5 FCC Rcd 5572 (1990). Since this is a change in transmitter site, Milestone will be expected to provide a gain and loss study. As requested, we shall also propose to modify the license for Station KLCI to specify operation on Channel 291C2 at Elk River, Minnesota, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 291C2 at Elk River or require Milestone to demonstrate the availability of an additional equivalent class channel for use by such parties.

4. In view of the fact that the proposed allotment would provide a first local service to Elk River, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 291C2 to Elk River. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to Elk River and Princeton, as follows:

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<sup>1</sup> The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3)]. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

<sup>2</sup> The coordinates for Channel 291C2 at Elk River are 45-23-00 and 93-48-30.

Community	Channel No.	
	Present	Proposed
Elk River, Minnesota	-----	291C2
Princeton, Minnesota	291C2	-----

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **January 19, 1999**, and reply comments on or before **February 3, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Anne Thomas Paxson  
Guy N. Benson  
Borsari & Paxson  
2033 M Street, N.W., Suite 630  
Washington, D. C. 20036

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau